

AMENDED IN ASSEMBLY APRIL 15, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1312

Introduced by Assembly Member O'Donnell

February 27, 2015

An act to amend Sections 71200, 71204.3, 71204.7, 71205, 71205.3, 71206, and 71207 of, and to repeal Sections 71204.2 and 71210.5 of, the Public Resources Code, relating to ballast water management.

LEGISLATIVE COUNSEL'S DIGEST

AB 1312, as amended, O'Donnell. Ballast water management.

The Marine Invasive Species Act, which generally applies to all vessels carrying or capable of carrying ballast water into the coastal waters of the state after operating outside of the coastal waters of the state and to all ballast water and associated sediments taken on a vessel, imposes specified requirements on the master, owner, operator, or person in charge of one those vessels to minimize the uptake and release of nonindigenous species. The act requires the State Lands Commission to adopt regulations governing ballast water management practices for vessels arriving at a California port from a port outside of the Pacific Coast Region, as defined.

This bill would define the term “port” for purposes of the act to mean any port or place in which a vessel was, is, or will be anchored or moored, or where a vessel will transfer cargo.

The act requires the master, owner, operator, agent, or person in charge of a vessel carrying, or capable ~~or~~ of carrying, ballast water, that visits a California port, to provide specified information in electronic

or written form to the commission upon the vessel's departure from each California port of call.

This bill would instead require that the above information be provided to the commission at least 24 hours before the vessel arrives ~~to~~ *at* that California port or, if a vessel's voyage is less than 24 hours in total duration, prior to departing the port of departure.

The act requires the commission to adopt specified regulations, on or before January 1, 2008, that require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement an interim performance standard, as prescribed, for specified periods and the final performance standard for the discharge of ballast water of zero detectable for all organism size classes by 2020. The act specifies that if an owner or operator of a vessel applies to install an experimental ballast water treatment system, and the commission approves that application on or before January 1, 2016, the commission shall deem the system to be in compliance with any future treatment standard adopted, for a period not to exceed 5 years from the date that the specified interim performance standards would apply to that vessel.

This bill would instead require the commission to adopt regulations that require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to comply with that interim performance standard ~~by~~ *either upon first arrival at a California port for new vessels constructed on or after January 1, 2020, or as of the first scheduled drydocking on or after January 1, 2020, for all other vessels, as applicable, and to meet the final performance standard for the discharge of ballast water of zero detectable living organisms for all organism size classes by 2026. January 1, 2030.* This bill would also extend to January 1, 2020, the operation of those provisions governing the compliance of experimental ballast water treatment systems with those specified interim performance standards.

The act requires the commission, in coordination with the United States Coast Guard, to take samples of ballast water and sediment from at least 25% of the arriving vessels subject to the act.

This bill would instead require the commission, in consultation with the United States Coast Guard, to take samples *of ballast water, sediment, and biofouling from* and inspect at least 25% of the arriving vessels subject to the act.

The act requires the commission, in consultation with the State Water Resources Control Board, the United States Coast Guard, and a specified

technical advisory group, to prepare and submit to the Legislature, on or before January 1, 2006, a specified report on the release of nonindigenous species from vessels.

This bill would delete that obsolete reporting requirement, and make various other changes relating to implementation of the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 71200 of the Public Resources Code is
2 amended to read:

3 71200. Unless the context otherwise requires, the following
4 definitions govern the construction of this division:

5 (a) "Ballast tank" means a tank or hold on a vessel used for
6 carrying ballast water, whether or not the tank or hold was designed
7 for that purpose.

8 (b) "Ballast water" means water and suspended matter taken on
9 board a vessel to control or maintain trim, draft, stability, or stresses
10 of the vessel, without regard to the manner in which it is carried.

11 (c) "Biofouling" means the attachment or association of marine
12 organisms to the wetted portion of a vessel or its appurtenances,
13 including, but not limited to, sea chests, propellers, anchors, and
14 associated chains.

15 (d) "Board" means the State Water Resources Control Board.

16 (e) "Coastal waters" means estuarine and ocean waters within
17 200 nautical miles of land or less than 2,000 meters (6,560 feet,
18 1,093 fathoms) deep, and rivers, lakes, or other water bodies
19 navigably connected to the ocean.

20 (f) "Commission" means the State Lands Commission.

21 (g) "EEZ" means exclusive economic zone, which extends from
22 the baseline of the territorial sea of the United States seaward 200
23 nautical miles.

24 (h) "Exchange" means to replace the water in a ballast tank
25 using either of the following methods:

26 (1) "Flow through exchange," which means to flush out ballast
27 water by pumping three full volumes of mid-ocean water through
28 the tank, continuously displacing water from the tank, to minimize
29 the number of original coastal organisms remaining in the tank.

(2) “Empty/refill exchange,” which means to pump out, until the tank is empty or as close to 100 percent empty as is safe to do so, the ballast water taken on in ports, or estuarine or territorial waters, then to refill the tank with mid-ocean waters.

(i) “Mid-ocean waters” means waters that are more than 200 nautical miles from land and at least 2,000 meters (6,560 feet, 1,093 fathoms) deep.

(j) “Nonindigenous species” means any species, including, but not limited to, the seeds, eggs, spores, or other biological material capable of reproducing that species, or any other viable biological material that enters an ecosystem beyond its historic range, including any of those organisms transferred from one country into another.

(k) “Pacific Coast Region” means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California. The commission may modify these boundaries through regulation if the proponent for the boundary modification presents substantial scientific evidence that the proposed modification is equally or more effective at preventing the introduction of nonindigenous species through vessel vectors as the boundaries described herein.

(l) “Person” means an individual, trust, firm, joint stock company, business concern, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. “Person” also means a city, county, city and county, district, commission, the state, or a department, agency, or political subdivision of the state, an interstate body, or the United States and its agencies and instrumentalities, to the extent permitted by law.

(m) “Port” means any port or place in which a vessel was, is, or will be anchored or moored, or where a vessel will transfer cargo.

(n) “Sediments” means matter settled out of ballast water within a vessel.

(o) “Waters of the state” means surface waters, including saline waters, that are within the boundaries of the state.

(p) “Wetted portion of a vessel” means all parts of a vessel’s hull and structures that are either submerged in water when the

1 vessel is loaded to the deepest permissible legal draft or associated
2 with internal piping structures in contact with water taken onboard.

3 (q) "Vessel" means a vessel of 300 gross registered tons or
4 more.

5 (r) "Voyage" means any transit by a vessel destined for a
6 California port from a port outside of the coastal waters of the
7 state.

8 SEC. 2. Section 71204.2 of the Public Resources Code is
9 repealed.

10 SEC. 3. Section 71204.3 of the Public Resources Code is
11 amended to read:

12 71204.3. (a) The commission shall adopt regulations governing
13 ballast water management practices for vessels arriving at a
14 California port from a port outside of the Pacific Coast Region.
15 The commission shall consider vessel design and voyage duration
16 in developing these regulations. The regulations shall be based on
17 the best available technology economically achievable, and shall
18 be designed to protect the waters of the state. The regulations shall
19 include, as appropriate, restrictions or prohibitions on discharge
20 of ballast water containing nonindigenous species into areas in
21 and outside estuaries and into ocean areas shown to have a capacity
22 to retain organisms.

23 (b) Subject to Section 71203, the master, operator, or person in
24 charge of a vessel arriving at a California port from a port outside
25 of the Pacific Coast Region shall comply with these regulations.

26 (c) Prior to and until the date of implementation of the
27 regulations described in subdivision (a), and subject to Section
28 71203, the master, operator, or person in charge of a vessel that
29 arrives at a California port from a port outside of the Pacific Coast
30 Region shall employ at least one of the following ballast water
31 management practices:

32 (1) Exchange the vessel's ballast water in mid-ocean waters,
33 before entering the coastal waters of the state.

34 (2) Retain all ballast water on board the vessel.

35 (3) (A) Discharge the ballast water at the same location where
36 the ballast water originated, provided that the master, operator, or
37 person in charge of the vessel can demonstrate that the ballast
38 water to be discharged was not mixed with ballast water taken on
39 in an area other than mid-ocean waters.

(B) For purposes of this paragraph, “same location” means an area within one nautical mile (6,000 feet) of the berth or within the recognized breakwater of a California port, at which the ballast water to be discharged was loaded.

(4) Use an alternative, environmentally sound method of ballast water management that, before the vessel begins the voyage, has been approved by the commission or the United States Coast Guard as being at least as effective as exchange, using mid-ocean waters, in removing or killing nonindigenous species.

(5) Discharge the ballast water to a reception facility approved by the commission.

(6) Under extraordinary circumstances, perform a ballast water exchange within an area agreed to by the commission in consultation with the United States Coast Guard at or before the time of the request.

SEC. 4. Section 71204.7 of the Public Resources Code is amended to read:

71204.7. (a) On or before July 1, 2005, the commission, in consultation with the United States Coast Guard, shall adopt regulations governing the evaluation and approval of shipboard experimental ballast water treatment systems.

(b) The regulations shall include criteria for the development of a formal application package to use those systems.

(c) (1) If an owner or operator of a vessel applies to install an experimental ballast water treatment system, and the commission approves that application on or before January 1, 2020, the commission shall deem the system to be in compliance with any future treatment standard adopted, for a period not to exceed five years from the date that the interim performance standards adopted pursuant to paragraphs (1) and (2) of subdivision (a) of Section 71205.3, as those paragraphs read on December 31, 2015; 71205.3 would apply to that vessel.

(2) The commission may rescind its approval of the system at any time if the commission, in consultation with the board and the United States Coast Guard, and after an opportunity for administrative appeal with the executive officer of the commission, determines that the system has not been operated in accordance with conditions in the agreed upon application package, or that there exists a serious deficiency in performance, human safety, or environmental soundness relative to anticipated performance, or

1 that the applicant has failed to provide the commission with
2 required test results and evaluations.

3 (d) The commission shall not approve an experimental ballast
4 water treatment system unless the owner or operator demonstrates
5 that the system has significant potential to improve upon the ability
6 of existing systems to kill, inactivate, or otherwise remove
7 nonindigenous species from ballast water.

8 (e) The commission shall disseminate to the public the test
9 results and evaluations regarding experimental ballast water
10 treatment systems described in this section.

11 SEC. 5. Section 71205 of the Public Resources Code is
12 amended to read:

13 71205. (a) (1) The master, owner, operator, agent, or person
14 in charge of a vessel carrying, or capable of carrying, ballast water,
15 that visits a California port, shall provide the information described
16 in subdivision (c) in electronic or written form to the commission
17 at least 24 hours before the vessel arrives at that California port.
18 If a vessel's voyage is less than 24 hours in total duration, the
19 vessel shall report the required information prior to departing the
20 port of departure.

21 (2) The information described in subdivision (c) shall be
22 submitted using a form developed by the United States Coast
23 Guard.

24 (b) If the information submitted in accordance with this section
25 changes, an amended form shall be submitted to the commission
26 upon the vessel's departure from each port of call in California.

27 (c) (1) The master, owner, operator, or person in charge of the
28 vessel shall maintain on board the vessel, in written or electronic
29 form, records that include all of the following information:

30 (A) Vessel information, including all of the following:

31 (i) Name.

32 (ii) International Maritime Organization number or official
33 number if the International Maritime Organization number has not
34 been assigned.

35 (iii) Vessel type.

36 (iv) Owner or operator.

37 (v) Gross tonnage.

38 (vi) Call sign.

39 (vii) Port of registry.

(B) Voyage information, including the date and port of arrival, vessel agent, last port and country of call, and next port and country of call.

(C) Ballast water information, including the total ballast water capacity, total volume of ballast water on board, total number of ballast water tanks, capacity of each ballast water tank, and total number of ballast water tanks in ballast, using measurements in metric tons (MT) and cubic meters (m³).

(D) Ballast water management information, including all of the following:

(i) The total number of ballast tanks or holds, the contents of which are to be discharged into the waters of the state or to a reception facility.

(ii) If an alternative ballast water management method is used, the number of tanks that were managed using an alternative method, as well as the type of method used.

(iii) Whether the vessel has a ballast water management plan and International Maritime Organization guidelines on board, and whether the ballast water management plan is used.

(iv) Whether the master, operator, or person in charge of the vessel has claimed a safety exemption pursuant to paragraph (1) of subdivision (b) of Section 71203 for the vessel voyage, and the reason for asserting the applicability of that paragraph.

(E) Information on ballast water tanks, the contents of which are to be discharged into the waters of the state or to a reception facility, including all of the following:

(i) The origin of ballast water, including the date and location of intake, volume, and temperature. If a tank has been exchanged, the identity of the loading port of the ballast water that was discharged during the exchange.

(ii) The date, location, volume, method, thoroughness measured by percentage exchanged if exchange is conducted, and sea height at time of exchange if exchange is conducted, of ballast water exchanged or otherwise managed.

(iii) The expected date, location, volume, and salinity of ballast water to be discharged into the waters of the state or a reception facility.

(F) Discharge of sediment and, if sediment is to be discharged within the state, the location of the facility where the disposal will take place.

1 (G) Certification of accurate information, that shall include the
2 printed name, title, and signature of the master, owner, operator,
3 person in charge, or responsible officer attesting to the accuracy
4 of the information provided and certifying compliance with the
5 requirements of this division.

6 (H) Changes to previously submitted information.

7 (2) The master, owner, operator, or person in charge of a vessel
8 subject to this subdivision shall retain a signed copy of the
9 information described in this subdivision on board the vessel for
10 two years.

11 (d) The master, owner, operator, or person in charge of a vessel
12 subject to this division shall retain for two years a separate ballast
13 water log outlining ballast water management activities for each
14 ballast water tank on board the vessel and shall make the separate
15 ballast water log available to the commission for inspection and
16 review.

17 (e) (1) The master, owner, operator, agent, or person in charge
18 of a vessel subject to this division shall provide the information
19 described in subdivision (f) in electronic or written form to the
20 commission annually upon request of the commission. The master,
21 owner, operator, agent, or person in charge of the vessel shall
22 submit that information within 60 days of receiving a written or
23 electronic request from the commission. For purposes of this
24 paragraph, the reporting shall begin on January 1, 2008, and
25 continue until the date that the regulations described in Section
26 71204.6 are adopted.

27 (2) (A) The information described in subdivision (f) shall be
28 submitted using a form developed by the commission.

29 (B) The master, owner, operator, or person in charge of a vessel
30 subject to this subdivision shall retain a copy of the form submitted
31 pursuant to this subdivision on board the vessel for two years.

32 (f) The master, owner, operator, agent, or person in charge of
33 a vessel subject to this division shall maintain, in written or
34 electronic form, records that include the following information:

35 (1) (A) Date and location of drydocking events.

36 (B) Whether the vessel in general, and the wetted portion of the
37 vessel, sea chests, anchors, and associated chains in particular,
38 were cleaned during a drydocking event.

39 (2) Date and geographic location of all inwater cleaning of the
40 wetted portion of the vessel.

1 (3) (A) Date and geographic location of all antifouling paint
2 applications to the vessel.

3 (B) The manufacturer and brand name of the antifouling paint
4 applied to the vessel.

5 (4) Any additional information required by the commission by
6 rule or regulation.

7 (g) (1) The master, owner, operator, agent, or person in charge
8 of a vessel subject to this division that has a ballast water treatment
9 system installed on board shall provide to the commission based
10 on a schedule to be developed by the commission, by rule or
11 regulation, in consultation with the advisory panel established in
12 Section 71204.9 and the United States Coast Guard, the following
13 information in electronic or written form:

14 (A) The manufacturer and product name of the ballast water
15 treatment system on board the vessel.

16 (B) If applicable, the name and organization that has approved
17 the ballast water treatment system and the approval or certification
18 number of the ballast water treatment system technology.

19 (C) The number of tanks and the volume of each tank that is
20 managed using the ballast water treatment system and that was
21 discharged in waters of the state.

22 (D) Any additional information required by the commission by
23 rule or regulation.

24 (2) The information required by paragraph (1) shall be provided
25 on a form developed by the commission.

26 (h) The master, owner, operator, agent, or person in charge of
27 a vessel subject to this division that has a ballast water treatment
28 system installed on board shall maintain on board the vessel, in
29 written or electronic form, records, including, but not limited to,
30 all of the following information:

31 (1) Copies of all reports and forms described in subdivision (g),
32 submitted to the commission.

33 (2) Material safety data sheets for all chemicals utilized in
34 conjunction with the ballast water treatment system.

35 (3) System manufacturer's technical guides, publications, and
36 manuals.

37 (4) Ballast water treatment system performance information,
38 which may be incorporated into the ballast water log described in
39 subdivision (d), and includes, at a minimum, all of the following
40 information:

1 (A) The date, time, and location of the starting and stopping of
2 the system for the purpose of treating ballast water.

3 (B) System malfunctions or unexpected situations, including
4 problem resolution.

5 (C) Both scheduled and unscheduled maintenance of the system.

6 (D) All relevant measures of performance recorded during
7 system operation.

8 (E) Any additional information required by the commission by
9 rule or regulation.

10 SEC. 6. Section 71205.3 of the Public Resources Code is
11 amended to read:

12 71205.3. (a) The commission shall adopt regulations that do
13 all of the following:

14 (1) Except as provided in Section 71204.7, require an owner or
15 operator of a vessel carrying, or capable of carrying, ballast water
16 that operates in the waters of the state to implement the interim
17 performance standards for the discharge of ballast water
18 recommended in accordance with Table x-1 of the California State
19 Lands Commission Report on Performance Standards for Ballast
20 Water Discharges in California Waters, as approved by the
21 commission on January 26, 2006.

22 (2) Except as provided in Section 71204.7, require an owner or
23 operator of a vessel carrying, or capable of carrying, ballast water
24 that operates in the waters of the state to comply with the interim
25 performance standards by ~~January 1, 2020~~; *the applicable following*
26 *date*:

27 (A) *Upon first arrival at a California port for new vessels*
28 *constructed on or after January 1, 2020.*

29 (B) *As of the first scheduled drydocking on or after January 1,*
30 *2020, for all other vessels.*

31 (3) Notwithstanding Section 71204.7, require an owner or
32 operator of a vessel carrying, or capable of carrying, ballast water
33 that operates in the waters of the state to meet the final performance
34 standard for the discharge of ballast water of zero detectable *living*
35 *organisms* for all organism size classes by ~~2026~~; *January 1, 2030.*

36 (b) (1) Not less than 18 months prior to ~~the scheduled~~
37 ~~compliance date specified in paragraph (2) of subdivision (a) and~~
38 ~~the date for implementation of the final performance standard, as~~
39 ~~specified in paragraph (3) of subdivision (a), January 1, 2020, and~~
40 *January 1, 2030*, the commission, in consultation with the State

1 Water Resources Control Board, the United States Coast Guard,
2 and the advisory panel described in subdivision (b) of Section
3 71204.9, shall prepare, or update, and submit to the Legislature a
4 review of the efficacy, availability, and environmental impacts,
5 including the effect on water quality, of currently available
6 technologies for ballast water treatment systems. If technologies
7 to meet the performance standards are determined in a review to
8 be unavailable, the commission shall include in that review an
9 assessment of why the technologies are unavailable.

10 (2) (A) ~~The requirements~~ *requirement* for submitting ~~reports~~
11 ~~a report~~ imposed under this subdivision ~~are~~ *is* inoperative on
12 January 1, 2024, ~~for the interim performance standards,~~ and
13 January 1, ~~2030, respectively,~~ 2034, ~~for the final performance~~
14 ~~standard,~~ pursuant to Section 10231.5 of the Government Code.

15 (B) A report to be submitted pursuant to this subdivision shall
16 be submitted in compliance with Section 9795 of the Government
17 Code.

18 SEC. 7. Section 71206 of the Public Resources Code is
19 amended to read:

20 71206. (a) The commission, in coordination with the United
21 States Coast Guard, shall take samples *of ballast water, sediment,*
22 *and biofouling from* and inspect at least 25 percent of the arriving
23 vessels subject to this division, examine documents, and make
24 other appropriate inquiries to assess the compliance of any vessel
25 subject to this division. The commission shall provide to the board
26 copies of all sampling results.

27 (b) The master, owner, operator, or person in charge of a vessel
28 subject to this division shall make available to the commission,
29 upon request of that commission, the records required to be
30 maintained by this division.

31 (c) The commission, in coordination with the United States
32 Coast Guard, shall compile the information obtained from
33 submitted reports. The information shall be used, in conjunction
34 with existing information relating to the number of vessel arrivals,
35 to assess vessel reporting rates and compliance with the
36 requirements of this division.

37 SEC. 8. Section 71207 of the Public Resources Code is
38 amended to read:

39 71207. (a) Nothing in this division restricts a state or local
40 agency, board, commission, or department, or a subdivision of one

1 of those entities, from enforcing this division, if the total fines
2 imposed by those entities do not exceed the amount of the fines
3 set forth in Section 71216.

4 (b) A person who violates this division is subject to civil and
5 criminal liability in accordance with Chapter 5 (commencing with
6 Section 71216).

7 (c) The commission may require a vessel operating in violation
8 of this division to depart the waters of the state and exchange, treat,
9 or otherwise manage the ballast water or biofouling, or both, at a
10 location determined by the commission, unless the master
11 determines that the departure or exchange would threaten the safety
12 or stability of the vessel, its crew, or its passengers.

13 SEC. 9. Section 71210.5 of the Public Resources Code is
14 repealed.